

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

SCOTT J. BINSACK, SR.,
Plaintiff

v.

LACKAWANNA COUNTY PRISON,
et al.

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CIVIL ACTION NO. 4:10-CV-535

(Judge Conner)

ORDER

AND NOW, this 1st day of December, 2010, upon consideration of the report of United States Magistrate Judge J. Andrew Smyser (Doc. 132, recommending that the motion to dismiss (Doc. 111) filed by defendants Lackawanna County Commissioners and the Lackawanna County Prison Board be denied; the motion for a more definite statement (Doc. 114) filed by defendants Correctional Care, Inc. and John and Jane Doe Medical Providers, Nurses and Doctors be granted; the motion to strike and/or dismiss the complaint (Doc. 112) filed by defendants Lackawanna County Prison, the Lackawanna County Commissioners, the Lackawanna County Prison Board, Donate, Betti, Prichard, Chiarelli, Carroll, Dominick, Magoosi, Rapford and Frank Doe be granted to the extent that the plaintiff be ordered to file an amended complaint that complies with Fed.R.Civ.P. 8(a) and provides a more definite statement of claims; and the motion to strike or dismiss the complaint (Doc. 118) filed by defendant Zaloga be granted to the extent that the plaintiff be ordered to file an amended complaint that complies with Fed.R.Civ.P. 8(a) and provides a more definite statement of claims, and, following an independent review of the record, it appearing that neither party has

objected to the magistrate judge's report and recommendation,¹ and that there is no clear error on the face of the record,² see Nara v. Frank, 488 F.3d 187, 194 (3d Cir. 2007) (explaining that "failing to timely object to [a report and recommendation] in a civil proceeding may result in forfeiture of *de novo* review at the district court level"), it is hereby ORDERED that:

1. The report of Magistrate Judge Smyser (Doc. 132) is ADOPTED in its entirety.
2. The motion to dismiss (Doc. 111) filed by defendants Lackawanna County Commissioners and the Lackawanna County Prison Board is DENIED.
3. The motion for a more definite statement (Doc. 114) filed by defendants Correctional Care, Inc. and John and Jane Doe Medical Providers, Nurses and Doctors is GRANTED.

¹ Pursuant to an order granting an extension of time (Doc. 42), objections were due by September 13, 2010. As of the date of this order, none have been filed.

² When parties fail to file timely objections to a magistrate judge's report and recommendation, the Federal Magistrates Act does not require a district court to review the report before accepting it. Thomas v. Arn, 474 U.S. 140, 149 (1985). As a matter of good practice, however, the Third Circuit expects courts to "afford some level of review to dispositive legal issues raised by the report." Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987). The advisory committee notes to Rule 72(b) of the Federal Rules of Civil Procedure indicate that "[w]hen no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." FED. R. CIV. P. 72(b), advisory committee notes; see also Henderson, 812 F.2d at 878-79 (stating that "the failure of a party to object to a magistrate's legal conclusions may result in the loss of the right to *de novo* review in the district court"); Tice v. Wilson, 425 F. Supp. 2d 676, 680 (W.D. Pa. 2006) (holding that the court's review is conducted under the "plain error" standard); Cruz v. Chater, 990 F. Supp. 375-78 (M.D. Pa. 1998) (holding that the court's review is limited to ascertaining whether there is "clear error on the face of the record"); Oldrati v. Apfel, 33 F. Supp. 2d 397, 399 (E.D. Pa. 1998) (holding that the court will review the report and recommendation for "clear error"). The court has reviewed the magistrate judge's report and recommendation in accordance with this Third Circuit directive.

4. The motion to strike and/or dismiss the complaint (Doc. 112) filed by defendants Lackawanna County Prison, the Lackawanna County Commissioners, the Lackawanna County Prison Board, Donate, Betti, Prichard, Chiarelli, Carroll, Dominick, Magoosi, Rapford and Frank Doe is GRANTED to the extent that the plaintiff is ordered to file an amended complaint that complies with Fed.R.Civ.P. 8(a) and provides a more definite statement of claims.
5. The motion to strike or dismiss the complaint (Doc. 118) filed by defendant Zaloga is GRANTED to the extent that the plaintiff is ordered to file an amended complaint that complies with Fed.R.Civ.P. 8(a) and provides a more definite statement of claims.
6. The plaintiff is ORDERED to file an amended complaint that complies with Fed.R.Civ.P. 8(a) and that provides a more definite statement of his claims on or before December 23, 2010. Failure to comply with this directive may result in the dismissal of this action.
7. The above-captioned case is REMANDED to Magistrate Judge Smyser for further proceedings.

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge